

**PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR JULY 23, 2020 AT 8:30 A.M.**

These are the tentative rulings for the **THURSDAY, JULY 23, 2020 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, JULY 22, 2020**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: ALL LAW AND MOTION MATTERS WILL PROCEED BY TELEPHONIC APPEARANCES. (PLACER COURT EMERGENCY LOCAL RULE 10.28.)

More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard via telephonic appearance.

1. M-CV-0028618 GCFS, INC. v. HAHN, JEFF

The motion to set aside default judgment is dropped from the calendar as no moving papers were filed with the court.

2. M-CV-0075074 FERRERO, CARLENE v. BROWN, DENISE

Defendant Denise Brown's Motion Pursuant to Civil Code Section 1952.3(a)

Defendant's motion pursuant to Civil Code section 1952.3(a) is denied. Defendant has not made a sufficient showing that possession is no longer an issue in this unlawful detainer action.

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3. **M-CV-0076054 SINCLAIR FAMILY FARM v. SINCLAIR CONCRETE**
 S-CV-0044409 SINCLAIR, KEITH v. SINCLAIR, KARIN

Defendant Sinclair Concrete's Motion to Consolidate

The motion is denied. Defendant has not made a sufficient showing the two actions involve common questions of law and/or fact to support consolidation of the unlawful detainer action, a summary proceeding, with the unlimited civil action.

4. **S-CV-0036980 SPENCER, SAMUEL v. SINCLAIR, ROBERT**

The motion for attorney's fees is continued to Thursday, August 20, 2020 at 8:30 a.m. in the law and motion department to be heard by Commissioner Michael A. Jacques. While the party filed reply papers in a timely manner, the documents were not provided to the court for review until this morning. The matter is continued to allow the court to review these filings.

5. **S-CV-0038444 LESTER, TIM v. DAL PINO QUALITY POOLS**

Defendant Neil O. Anderson and Associates, Inc.'s Motion for Summary Judgment

Ruling on Requests for Judicial Notice

Defendant's request for judicial notice is granted under Evidence Code section 452.

Plaintiffs' request for judicial notice is granted under Evidence Code section 452.

Ruling on Motion

The motion is granted. The trial court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law." (Code of Civil Procedure section 437c(c).) The moving party bears the initial burden of establishing that one or elements of a cause of action cannot be established or there is a complete defense to the cause of action. (Id. at 437c(p)(2).) Only when this initial burden is met does the burden shift to the opposing party to establish a triable issue of material fact. (Ibid.) In reviewing

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a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.)

Defendant seeks summary judgment based on the ten year statute of limitations under Code of Civil Procedure section 337.15. This section provides, in pertinent part, that any latent deficiency in the design, specification, surveying, planning, supervision, or observation of construction or construction of an improvement to, or a survey of, real property be brought within 10 years after substantial completion of the development or improvement. (Code of Civil Procedure section 337.15(a)(1).) The 10 year period commences upon substantial completion but shall be no later than (1) the final date of inspection by a public agency; (2) the recordation date of a valid notice of completion; (3) the date of use or occupation of the improvement; or (4) one year after the cessation or termination of work on the improvement, whichever occurs first. (Id. at 337.15(g)(1)-(4).) Plaintiffs have failed to meet their burden and establish a triable issue related to the 10 year statute of limitations.

To reiterate, the court reviews the evidence in the light most favorable to plaintiff. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) In this regard, the court accepts for the purposes of this motion that substantial compliance under Section 337.15 occurred when the City of Rocklin approved the project on February 20, 2007. (Plaintiffs' SSUMF No. 38.) This, in turn, means the 10 year statute of limitations ran on February 20, 2017. Plaintiffs did file their original complaint on January 20, 2017, which falls within the statute of limitations period. (Plaintiffs' RJN, Exhibit A.) However, they did not name the defendant in the original complaint. (Ibid.) The moving defendant was not named until the filing of the first amended complaint on May 30, 2019. (Defendant's RJN, Exhibit A.) Defendant was a newly named defendant in the first amended complaint, so the claims within the pleading do not relate back to the filing of the original complaint. (*Woo v. Superior Court* (1999) 75 Cal.App.4th 169, 176.) Thus, the undisputed evidence shows plaintiffs' claims against defendant were filed outside of the 10 year statute of limitations. Plaintiffs have failed to establish a triable issue here.

Plaintiffs have also failed to establish a triable issue related to the application of equitable estoppel to the 10 year statute of limitations. The court, for the purposes of this discussion, sets aside the fact plaintiffs failed to plead equitable estoppel in their first amended complaint. Assuming this had been properly

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pleaded, the evidence presented to the court does not raise a triable issue on the matter. Equitable estoppel may be asserted to stop a defendant from asserting the statute of limitations as a defense to plaintiffs' claims where it is shown (1) the defendant represents during the statute of limitations period that defendant will repair the damages, making it unnecessary for plaintiffs to sue; (2) plaintiffs reasonably relied on the representations, refraining from bringing a timely action; (3) the representations were found to be false after the limitations period had expired; and (4) plaintiffs proceeded diligently with the litigation after discovering the truth. (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 384.) Plaintiffs submit evidence that Mr. Holmer, the former principal of defendant Neil O. Anderson and Associates, Inc., returned to inspect the crack in the pool and discuss repair methods. (Plaintiffs' SSUMF Nos. 21, 40-42.) This evidence, however, does not raise a triable issue regarding representations by Mr. Holmer, causing plaintiffs to refrain from filing a timely action. To reiterate, plaintiffs knew when they filed their original complaint on January 20, 2017, within the 10 year statute of limitations period, that defendants would not repair the pool. Plaintiffs, however, failed to name the moving defendant in the action until May 30, 2019, more than two years later. The evidence submitted by plaintiffs does not raise a triable issue that would relate this delay to representations made by the moving defendant so as to invoke the doctrine of the equitable estoppel. Since plaintiffs have failed to meet their burden, the motion is granted.

6. S-CV-0040270 FIELD SUPPLY v. FIELD, JONATHAN

The motion for summary judgment and motion to compel are continued to Thursday, July 30, 2020 at 8:30 a.m. in Department 42. The court received additional filings from the parties late on Tuesday, July 21, 2020. The motions are continued so that the court can review these documents.

7. S-CV-0040580 HIRSCHBEK, ERIK v. ASPEN EARTHWORKS

The motion for summary judgment is dropped from the calendar as no moving papers were filed with the court.

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8. S-CV-0040670 NAYYAR, MANOJ v. K. HOVNANIAN AT FIDDYMENT

Cross-Complainants K. Hovnanian at Fiddymment Ranch, LLC and K. Hovnanian Companies of California, Inc.'s Motion to Compel Deposition Testimony of LARK Industries

The motion is dropped from the calendar in light of the request made in the declaration of Erik Tofft filed on July 13, 2020.

Cross-Complaints K. Hovnanian at Fiddymment Ranch, LLC and K. Hovnanian Companies of California, Inc.'s Motion to Compel Deposition of PMQ

The motion is dropped from the calendar in light of the request made in the declaration of Erik Tofft filed on July 13, 2020.

9. S-CV-0041470 HOFFMAN, AARON v. OMNI STRUCTURES & MGMT

Cross-Defendant Capitol City Stucco, Inc.'s Motion for Summary Judgment or, in the Alternative, Summary Adjudication

Ruling on Objections

Plaintiff's objections are overruled.

Ruling on Request for Judicial Notice

Capitol City Stucco's request for judicial notice is granted under Evidence Code section 452.

Ruling on Motion

The current motion is, in actuality, three separate summary judgment motions. Capitol City Stucco seeks summary judgment/adjudication as to the plaintiff's complaint; Omni Structures & Management, Inc.'s cross-complaint; and Curtis Beresford's cross-complaint. The trial court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law." (Code of Civil Procedure section 437c(c).) A party to the action may also move for summary adjudication if that party contends there is no merit to one or more of the causes of action. (Code of Civil Procedure section 437c(f)(1).) However,

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a motion for summary adjudication shall only be granted where it completely disposes of a cause of action. (*Ibid.*) The moving party bears the initial burden of establishing that one or elements of a cause of action cannot be established or there is a complete defense to the cause of action. (*Id.* at 437c(p)(2).) Only when this initial burden is met does the burden shift to the opposing party to establish a triable issue of material fact. (*Ibid.*) In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.)

The complaint primarily alleges negligence based causes of action while the cross-complaints seek equitable indemnity, contribution, apportionment, and declaratory relief. In order to shift the initial burden, Capitol City Stucco must make a showing that elements in each cause of action cannot be established. It has failed to meet its burden. Contrary to Capitol City Stucco's contentions, its scope of work covered various responsibilities beyond lath and plaster work. (Capitol City Stucco's Evidence, Exhibit C.) This included coordination with other subcontractors regarding safety, cleanup, supervision, and installation of work. (*Ibid.*) Capitol City Stucco was also required to provide the scaffolding and contracted with Curtis Beresford to lease the scaffolding. (*Id.* at Exhibits C, E, F, U, V.) Capitol City Stucco was also responsible for performing inspections and maintenance obligations. (*Ib.* at Exhibits C, D.) The scaffolding Capitol City Stucco leased for the project and agreed to inspect and maintain was used by plaintiff while plaintiff was performing work at the project site. (*Id.* at Exhibits K, L.) A board broke under plaintiff's right foot, causing him to fall 4-5 feet and suffer injuries to his right leg. (*Id.* at Exhibit K.) This evidence does not negate plaintiff's negligence based claims or the equitable indemnity, contribution, or apportionment claims alleged in the two cross-complaints. Since Capitol City Stucco has not met its initial burden, the requests for summary judgment/adjudication as to the complaint and two cross-complaints are denied.

10. S-CV-0041570 ENTERPRISE GROUP v. GREENE, RICHARD

The motion for summary judgment is continued to Thursday, July 30, 2020 at 8:30 a.m. in Department 42. The court apologizes for the inconvenience.

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11. S-CV-0041710 GALLAGHER BASSETT SERV. v. HUNANYAN, GARIK

The motion to be relieved as counsel is dropped from the calendar as no moving papers were filed with the court.

12. S-CV-0042166 SWEARINGEN, MATTHEW v. SIERRA PACIFIC HOME

The motion for leave to file an amended complaint is dropped from the calendar as no moving papers were filed with the court.

13. S-CV-0043000 VASQUEZ, RAQUEL v. AEROTEK

Defendants' Motion to Compel Arbitration and Stay Action

The motion is continued to Thursday, July 30, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for the inconvenience.

14. S-CV-0043370 HACKER, JESSE v. AMERICAN HONDA MOTOR CO.

Plaintiffs' Motion to Compel Deposition of Defendant American Honda Motor Co.'s Person Most Qualified and Sanctions

Plaintiffs' motion to compel deposition of defendant's person most qualified (PMQ) is granted. Defendant's request for judicial notice is denied. Defendant American Honda Motor Co., Inc. shall produce its PMQ for deposition within 30 days of service of the signed order after hearing. Defendant shall also produce the documents requested in matter nos. 1, 2, 3, 5, 6, 7 and request nos. 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27 without further objections. The request for sanctions is denied as to both parties. Although defendant should have communicated further with plaintiff regarding the circumstances for delay, the court finds that on balance both parties acted with substantial justification and sanctions are not warranted in this instance.

15. S-CV-0043816 MY SECURE ADVANTAGE v. U.S. LEGAL SERVICES

The two motions to compel further responses to document productions are continued to Thursday, August 20, 2020 at 8:30 a.m. in Department 42 to be heard in conjunction with the pending motion for appointment of a discovery referee.

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16. **S-CV-0043962 MOSELEY, BRIANNA v. OAKMONT PROP-CREEKSID**

Defendants FPI Management, Inc. and Amanda Colley’s Motion for Judgment on the Pleadings

Ruling on Request for Judicial Notice

Defendants’ request for judicial notice of the complaint is granted under Evidence Code section 452.

Ruling on Motion

The motion is denied. A motion for judgment on the pleading may be granted where the complaint or cross-complaint does not state sufficient facts to constitute a cause of action. (Code of Civil Procedure section 438(c)(1)(B)(ii).) The motion has the same function as a demurrer but is brought where the time for a demurrer has expired. (Code of Civil Procedure section 438(g); *Southern California Edison Co. v. City of Victorville* (2013) 217 Cal.App.4th 218, 227.) “[J]udgment on the pleadings must be denied where there are material factual issues that require evidentiary resolution. (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216.) The complaint, when the factual allegations are read as a whole, are sufficient to support each of the ten causes of action alleged against the moving defendants. Plaintiffs allege defendant FPI Management, Inc. is the property manager and acted as the agent for the property owner Oakmont Properties-Creekside. (Complaint ¶¶5, 7.) They go on to allege defendant Amanda Colley is the Community Director at the property who is also a property manager that acted as the agent for Oakmont. (Id. at ¶¶6, 7.) Plaintiffs then provide a detailed recitation of general factual allegations, which are incorporated by reference into each cause of action. (Id. at ¶¶10-56, 57, 63, 71, 78, 88, 97, 106, 113, 125, 130.) This includes allegations that plaintiff Brianna Moseley entered into a written lease contract with all defendants. (Id. at ¶10.) These allegations are sufficient to support each of the claims alleged in the complaint. Since the complaint is sufficiently pleaded, the motion is denied in its entirety.

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17. **S-CV-0044464 BLAND, MICHELLE v. KAMESWARAN, SARASWATHY**
 R-SC-0025209 KAMESWARAN, SARASWATHY v. BLAND, MICHELLE

Plaintiff Michelle Bland's Motion for Reclassification and Consolidation of Actions

The motion is denied. Small claims actions are subject to special procedures as outlined in the Small Claims Act, codified at Code of Civil Procedure section 116.110 et seq. The purpose of the Act is provide an expeditious, inexpensive, and fair way to adjudicate minor civil disputes. (Code of Civil Procedure section 116.120(b).) Thus, a party seeking to transfer a small claims action to the superior court must follow the procedures outlined in the Act. (see c.f. *Acuna v. Gunderson Chevrolet, Inc.* (1993) 19 Cal.App.4th 1467.) The Act expressly outlines a process for a defendant to seek transfer of a small claims action to the superior court in Code of Civil Procedure section 116.390, requiring the defendant to present the motion to the small claims court for determination. The plaintiff in this action is the defendant in the small claims case. The proper method for transfer of the small claims action is to first present the request to the small claims court. For these reasons, the motion is denied.

18. **S-CV-0044652 IN RE MATTER OF JOHNSON, GREGORY**

Amended Expedited Petition to Approve Compromise of Minor's Disputed Claim

The amended expedited petition to approve compromise of disputed minor's claim is granted as prayed. After careful consideration of the petition and supporting attachments, the court finds the settlement is in the best interest of the minor. (Probate Code sections 2504, 3500; Code of Civil Procedure section 372; *Pearson v. Superior Court (Nicholson)* (2012) 202 Cal.App.4th 1333, 1337.) If oral argument is requested, the appearance of the minor at the hearing is waived.

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19. S-CV-0044668 CLOUSE, CRAIG v. APEX APPRAISAL SERVICE

Defendant Apex Appraisal Service, Inc.'s Demurrer to the Complaint

The demurrer is overruled. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (Code of Civil Procedure section 430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The allegations within the complaint, when read as a whole, are sufficient to alleged delayed discovery for the purposes of the statute of limitations. Further, the allegations are sufficient to support each of the five causes of action alleged against the defendant.

Defendant shall file its answer or general denial by August 7, 2020.

Defendant Guild Mortgage Company's Demurrer to the Complaint

The demurrer is overruled. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (Code of Civil Procedure section 430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The allegations within the complaint, when read as a whole, are sufficient to alleged delayed discovery for the purposes of the statute of limitations. Further, the allegations are sufficient to support the first, second, and third causes of action.

Defendant shall file its answer or general denial by August 7, 2020.

Defendant Robert Cha's Demurrer to the Complaint

The demurrer is overruled. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (Code of Civil Procedure section 430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described

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conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The allegations within the complaint, when read as a whole, are sufficient to alleged delayed discovery for the purposes of the statute of limitations. Further, the allegations are sufficient to support each of the five causes of action alleged against the defendant.

Defendant shall file its answer or general denial by August 7, 2020.